

83-160

IN THE

SUPREME COURT OF THE UNITED

Office - Supreme Court, U.S.

FILED

JUL 18 1983

ALEXANDER L. STEVAS,
CLERK

No.

BETTY T. KRALL,

Petitioner

vs.

BETHEL PARK SCHOOL DISTRICT,

Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT
OF PENNSYLVANIA

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QUESTIONS PRESENTED

1. May each school board in the State of Pennsylvania determine what "immorality" is without offending constitutional guarantees of equal protection and due process? Does a rule of "no law" by a state offend the Constitution?

2. Is the term "immorality" so nebulous to be without meaning?

3. May an administrative decision of the Secretary of Education as a matter of law be reversed by Commonwealth Court (an appellate court) as a question of fact? Does the Secretary's decision have any "legal significance"?

4. May the Commonwealth Court pose the issue as one of law and decide the matter as one of fact? E.g., "Thus the issue here is whether Mrs. Krall's conduct constituted

immorality as a matter of law"...and...". the determination of community standards is made by the school board, and thus a finding of the board that a professional employee as guilty of offending the moral standards of the community by his actions will not be disturbed on appeal when supported by substantial evidence. Emphasis ours. Opinion at 2 and 3.

5. Does a single isolated incident rise to a "course of conduct" under the Public School Code thus justifying termination of employment?

6. Is a single act of prevarication so inimical to the welfare of the school community so as to justify termination of employment?

7. Does a teacher have the right to present evidence of discrimination and prejudice on the part of the school board?

8. May the school board terminate a teacher's employment for doing what it permits other teachers in the school district to do?

TABLE OF CONTENTS

	Page
Questions Presented	i
Opinions and Orders Below.....	2
Jurisdiction.....	2
Questions Presented for Review.....	3
Constitutional Provision Involved...	5
Statutes Involved.....	5
Statement of the Case.....	9
Reasons for Granting the Writ.....	11
Conclusion.....	20

TABLE OF CITATIONS

Cases Cited:

	Page
<u>Appeal of Barton Howe, III,</u> <u>Teacher Tenure Act Appeal No.</u> <u>296, 37 Commonwealth Court 241</u> <u>(1978).....</u>	17
<u>Bethel Park School Dist. v.</u> <u>Krall, Pa. Cmwlth., 445 A.2d</u> <u>1377.....</u>	Appendix
<u>Board of School Directors of</u> <u>Riverside Beaver School District</u> <u>v. Barton Howe, III, 389 A.2d</u> <u>1214, 37 Pa. Cmwlth. Ct. 241</u> <u>(1978).....</u>	19
<u>Fisher v. Snyder, 476 F.2d</u> <u>375 (1973), 28 U.S.C.A. 1343</u> <u>(3/4), 42 U.S.C.A. (1983).....</u>	13
<u>Hanover Twp. Fed. of Teachers,</u> <u>et al. v. Hanover Com. School</u> <u>Corp., et al., 318 F. Supp.</u> <u>757 (1970).....</u>	14
<u>Lane v. Wilson, 307 U. S. 268....</u>	13
<u>Lanzetta v. New Jersey, 306</u> <u>U. S. 451, 83 L.Ed 888.....</u>	12
<u>State v. Vallery, 212 La. 1095,</u> <u>34 So. 2d 329.....</u>	12
<u>Yick Wo v. Hopkins, 11 U. S. 356.</u>	13

Statutes Cited:

24 P.S. 11-1122 Causes for Termination of Contract.....	5
U. S.C.A. Const. Art. 1 Constitution of the United States, Art. XIV and Art. V.....	5

APPENDIX

A. Denial dated April 19, 1983 of Petition for Allowance of Appeal by the Supreme Court of Pennsylvania.....	1a
B. Order of the Honorable Genevieve Blatt of the Commonwealth Court of Pennsylvania dated July 28, 1982.....	2a
C. Opinion and Order of the Honorable David W. Craig of the Commonwealth Court of Pennsylvania dated June 8, 1982.....	3a

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The Petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of Pennsylvania entered in the above entitled case on the 19th day of April, 1983 and the Orders of the Commonwealth Court of Pennsylvania dated July 28, 1982 and June 8, 1982.

OPINIONS BELOW

The Bethel Park School District dismissed Bette T. Krall, a professional employee, for conduct which it considered immoral under Section 1122 of the Public School Code. The Secretary of Education sustained the appeal of Bette T. Krall and ordered her reinstated. The Bethel Park School District appealed that order to the Commonwealth Court, which on June 8, 1982, reversed the Secretary of Education and sustained the Order of the School District. The Commonwealth Court denied reargument on July 28, 1982. The Supreme Court of Pennsylvania denied a Petition for Allowance of Appeal on April 19, 1983 and this Petition followed. A copy of the Opinion and Orders are attached hereto as Appendix A, B and C.

JURISDICTION

Jurisdiction is conferred upon this Court to review the judgment of state courts

by writ of certiorari through the United States Code, Title 28, §1254(1).

QUESTIONS PRESENTED FOR REVIEW

1. May each school board in the state of Pennsylvania determine what "immorality" is without offending constitutional guarantees of equal protection and due process? Does a rule of "no law" by a state offend the Constitution?

2. Is the term "immorality" so nebulous to be without meaning?

3. May an administrative decision of the Secretary of Education as a matter of law be reversed by Commonwealth Court (an appellate court) as a question of fact? Does the Secretary's decision have any "legal significance"?

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determination of community standards is made by the school board, and thus a finding of the board that a professional employee was guilty of offending the moral standards of the community by his actions will not be disturbed on appeal when supported by substantial evidence. Emphasis ours. Opinion at 2 and 3.

5. Does a single isolated incident rise to a "course of conduct" under the Public School Code thus justifying termination of employment?

6. Is a single act of prevarication so inimical to the welfare of the school community so as to justify termination of employment?

7. Does a teacher have the right to present evidence of discrimination and prejudice on the part of the school board?

8. May the school board terminate a teacher's employment for doing what it permits other teachers in the school district to do.

CONSTITUTIONAL PROVISION INVOLVED

The Constitution of the United States provides as follows:

ARTICLE (XIV). Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATUTES INVOLVED

The following statutes are involved:

11.1122. Causes for termination of contract.

The only valid causes for termination of a contract heretofore or hereafter entered into with a professional employe shall be immorality, incompetency, intemperance, cruelty, persistent negligence, mental derangement, advocacy of or participating in un-American or subversive doctrines, persistent and wilful violation of the school laws of this Commonwealth on the part of the professional employe: Provided, that boards of school directors may terminate the service of any professional employe who has attained to the age of sixty-two except a professional employe who is a member of the old age and survivors insurance system pursuant to the provisions of the act, approved the first day of June, one thousand nine hundred fifty-six

(Pamphlet Laws 1973). In such case the board may terminate the service of any such professional employee at the age of sixty-five or at the age at which the employee becomes eligible to receive full benefits under the Federal Social Security Act.

Nothing within the foregoing enumeration of causes, shall be interpreted to conflict with the retirement of professional employees upon proper evidence of disability, or the election by professional employees to retire during the period of voluntary retirement, or the authority of the board of school directors to require professional employees to retire during said period of voluntary retirement, or the compulsion on the part of professional employees to retire at the attainment of age seventy. 1949,

March 10, P.L. 30, Art. XI, 1122;
1949, May 9, P.L. 939, 4; 1957, June
28, P.O. 395,1; 1961, July 26, P.O.
891, 1.

1983. Civil action for
deprivation of rights.

Every person who, under color
of any statute, ordinance, regu-
lation, custom, or usage, of any
State or Territory or the District of
Columbia, subjects, or causes to be
subjected, any citizen of the United
States or other person within the
jurisdiction thereof to the depri-
vation of any rights, privileges, or
immunities secured by the Consti-
tution and laws, shall be liable to
the party injured in an action at
law, suit in equity, or other proper
proceeding for redress. For the
purposes of this section, any Act of

Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

R.S. §1979; Pub.L.96-170, §1, Dec.29, 1979, 93 Stat.1284.

STATEMENT OF THE CASE

The facts of the incident were stipulated by the parties before the School Board and hence to the Secretary of Education and Commonwealth Court. Mrs. Krall was a tenured professional employee of the district since 1969 and was also an elected director of another school district in which she resided. In the latter capacity Mrs. Krall wished to attend a conference in New Orleans, Louisiana, on February 14 and 15, 1979. Having previously requested and been refused any personal time off to attend conferences, Mrs. Krall did not request personal time off to attend this conference; instead she simply

informed her principal's secretary that she would be unavailable to perform her duties on the subject date.

After attending the conference and returning to work Mrs. Krall submitted a report for excused absence for February 14 and 15, 1979 listing illness as the reason for her absence. Shortly thereafter Mrs. Krall submitted a statement from her physician indicating that she was ill on the subject dates. This statement was based on misrepresented information received from Mrs. Krall's husband without benefit of an actual physical exam. Upon learning of the misrepresentation, Mrs. Krall's physician contacted the school district and retracted his report.

The School Board dismissed Mrs. Krall after a hearing determining that her conduct amounted to "immorality" under the Code. Mrs. Krall appealed her dismissal to the Secretary of Education and a hearing was

held on October 3, 1979. More than two years later, on November 30, 1981, the Secretary of Education sustained Mrs. Krall's appeal concluding as a matter of law that Bette T. Krall's conduct did not amount to "immorality" as a matter of law. The school district appealed to Commonwealth Court who reversed in favor of the school district and found that the school board decision will not be disturbed when supported by substantial evidence notwithstanding that all facts had been stipulated and there were no credibility questions or facts to find.

Bette T. Krall having prevailed before the Secretary of Education first raised Constitutional issues before the Commonwealth Court of Pennsylvania which was the court of first instance to hear the matter.

REASONS FOR GRANTING THE WRIT

I.

The Petitioner contends that Commonwealth Court's holding that it will not

disturb this school board's determination of community standards when supported by substantial evidence (when all facts are stipulated and there is nothing to find) violates the United States Constitutional guarantees of due process and equal protection. That this is in effect a rule of no law; that it enables and encourages school boards to act arbitrarily and capriciously.

By permitting each school board to determine its definition of what "immoral" means the school board's determination must by definition be void for vagueness. State v. Vallery, 212 La. 1095, 34 So.2d. 329; Lanzetta v. New Jersey, 306 U.S. 451, 83 L.Ed. 888.

To the extent that the law of Pennsylvania leaves it to the absolutely unfettered discretion of a school board, what the punishment will be (reprimand, suspension or discharge), then to that extent the law of

Pennsylvania is unconstitutional. Fisher v. Snyder, 476 F.2d 375 (1973), 28 U.S.C.A. 1343(3,4), 42 U.S.C.A. (1983) It is unconstitutional under the Fourteenth Amendment of the United States Constitution, which provides that no state shall deprive any person of life, liberty or proeprty without due process of law.

II.

Petitioner further contends that constitutional due process has been violated. The teacher had a right to present evidence of discrimination and prejudice on the part of the school board. The Secretary of Education took no additional evidence even though requested by the teacher but we must remember that he found for the teacher. The teacher had a right to show that she was fired for doing what the school administration tolerates or permits other teacher's to do. Yick Wo v. Hopkins, 118 U. S. 356; Lane v. Wilson

307 U. S. 268. If the teacher is entitled to a fair and an impartial hearing, may she prove that the school board was neither fair nor impartial? May she show that the "death knell" had sounded before her hearing and that the school board permitted other teachers to do that for which she was fired. Hanover Twp. Fed. of Teachers, et al. v. Hanover Com. School Corp., et al., 318 F. Supp. 757 (1970).

III.

By correctly stating the issue as a question of law and then deciding it as a question of fact, Commonwealth Court has acted arbitrarily and has departed from the accepted and usual course of judicial decision making so as to call for an exercise of the power of supervision of the Supreme Court. The Secretary of Education's finding was not based on credibility or substantial evidence but was

based on a finding of law which he specifically made as follows:

"In this opinion we conclude that the teacher's conduct did not amount to immorality as a matter of law. In reaching this determination, we have not re-evaluated the credibility of the witnesses but have accepted the stipulated facts read into the record of the hearing below."

The Commonwealth Court in reviewing the record correctly stated the issue as follows:

"Thus, the issue here is whether Mrs. Krall's conduct constituted immorality as a matter of law".

The Court erred in never answering the issue that it posed. The Court did so by finding that:

"community standards are made by the school board and thus a finding of

the board that a professional employee was guilty of offending the moral standards of the community will not be disturbed on appeal when supported by substantial evidence." Opinion at 3.

The Court committed an error in its misapprehension of the nature of substantial evidence. Substantial evidence is defined as "that adduced for the purpose of proving a fact in issue..." Black's Law Dictionary Revised, 4th Edition. There were no facts in dispute; there was no evidence to weigh. All facts were stipulated. The Court erred in defining the issue as one of law and making its determination based on findings of fact, i.e., whether substantial evidence was present. Thus, the Commonwealth Court's determination that community standards have been offended and will not be disturbed when

supported by substantial evidence is a specious argument which never answers the questions of whether the stipulated facts amount to "immorality". It is therefore arbitrary and capricious and deprives this Petitioner of due process under color of law.

IV.

The decision of the Commonwealth Court is inconsistent with decisions of that court on the same question. In the Appeal of Barton Howe, III, Teacher Tenure Act Appeal No. 296, 37 Commonwealth Court 241 (1978) the Appellant, Barton Howe, submitted an absentee slip listing illness as the reason for his inability to work on two days. In fact, the teacher was working in a department store on the two days in question. In reversing the teacher's dismissal on the basis of immorality the Secretary concluded as follows:

"We believe that the Board has acted in a manner unreasonably harsh in

view of the circumstances. In view of the fact that the Appellant was an 8 year veteran with a record previously above reproach, we find the charges as to immorality excessive and an abuse of Board discretion. A single act of lying is not so inimical to the welfare of the school community that it would necessarily effect student-teacher relationships. In this case there has been no clear nexus established between the teacher's act of lying and the Appellant's fitness to teach. Therefore, we re-reverse the dismissal of the charges of immorality".

On appeal, Commonwealth Court reversed because of the Secretary's improper re-evaluation of the credibility of witnesses.

Board of School Directors of Riverside Beaver
School District v. Barton Howe, III, 389
A.2d 1214, 137 Pa. Cmwlt. Ct. 241 (1978) In
Howe, Judge Disalle speaking for the Court
said;

"the problem with Howe's contention
that the Secretary concluded solely
as a matter of law that his conduct
did not amount to immorality, is that
at no point in his opinion does the
Secretary say this". Id. at 249.

In the instant case the Secretary
has so stated as follows:

In this opinion we conclude that the
teacher's conduct did not amount to
immorality".

The Secretary of Education has
decided that "this conduct did not amount to
immorality as a matter of law".

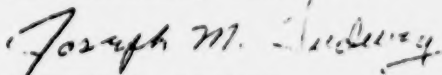
Judge DiSalle and hence Commonwealth

Court, has implicitly sanctioned the decisions of the Secretary if only he (secretary) will say so as a matter of law. The Secretary has so stated. It is clear therefore that the instant decision is not in accord with present or past decisions of Commonwealth Court and should be reversed.

CONCLUSION

For the foregoing reasons, the public interest requires, it is respectfully submitted, that the petition for writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Joseph M. Ludwig".

JOSEPH M. LUDWIG

Attorney for Petitioner

THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

Carl Rice, Esq.
Prothonotary

801 City-County Building
Pittsburgh, PA
15219

Irma T. Gardner
Deputy Prothonotary

April 21, 1983

Joseph M. Ludwig, Esquire
Ludwig and Achman
312 Frick Building
Pittsburgh, PA 15219

In Re: Bethel Park School District v. Krall
No. 222 W.D. Allocatur Docket, 1982

Dear Mr. Ludwig:

This is to advise you that your
Petition for Allowance of Appeal in the above-
captioned matter was denied by the Court on
April 19, 1983.

Very truly yours,

s/ Carl Rice

Prothonotary

CR:erv

cc: A. Bruce Bowden, Esquire
57th Floor, 600 Grant Street
Pittsburgh, PA 15219

Honorable David W. Craig
Commonwealth Court of Pa.
622 South Office Building
Harrisburg, PA 17121

Appendix A

1a

BETHEL PARK SCHOOL : IN THE COMMONWEALTH COURT
DISTRICT, :
Petitioner : OF PENNSYLVANIA
v. :
BETTE T. KRALL, :
Respondent : No. 3236 C. D. 1981

O R D E R

NOW, July 28, 1982, having
considered respondent's application for
reargument and petitioner's response thereto,
said application is hereby denied.

BY THE COURT:

s/

Genevieve Blatt, J.

Certified from the Record
July 29, 1982

Francis C. Barbush
Chief Clerk

Appendix B

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

BETHEL PARK SCHOOL DISTRICT,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 3236 C.D.
	:	1981
BETTE T. KRALL,	:	
	:	
Respondent	:	

BEFORE: HONORABLE THEODORE O. ROGERS, Judge
HONORABLE GENEVIEVE BLATT, Judge
HONORABLE DAVID W. CRAIG, Judge

ARGUED: May 3, 1982

OPINION BY JUDGE CRAIG

FILED: June 8, 1982

The Bethel Park School District

here appeals an order of the Secretary of Education sustaining the appeal of Bette T. Krall, a professional employee, who was dismissed by the district for conduct considered immoral under Section 1122 of the Public School Code.¹

The facts of the incident which resulted in Mrs. Krall's dismissal are not in dispute. Mrs. Krall had been a tenured professional employee of the district since 1969, and was also an elected director of another school district in which she resides. In that latter capacity, Mrs. Krall wished to attend a conference in New Orleans, Louisiana, on February 14 and 15, 1979. Having previously requested and been refused paid personal time off to attend conferences unrelated to her work in Bethel Park, Mrs. Krall did not request personal time off to attend this conference; instead, she simply informed her

principal's secretary that she would be unavailable to perform her duties on the subject dates.

After attending the conference and returning to work, Mrs. Krall submitted a report of excused absence for February 14 and 15, 1979, listing illness as the reason for her absence. Shortly thereafter, Mrs. Krall submitted a statement from her physician indicating that she was ill on the subject dates. This statement was based on misrepresented information received from Mrs. Krall's husband without the benefit of an actual physical examination. Upon learning of the misrepresentation, Mrs. Krall's physician contacted the school district to retract his report.

Subsequently, following a hearing, the board dismissed Mrs. Krall, determining that her conduct amounted to immorality under the Code. Mrs. Krall appealed her dismissal

to the Secretary of Education, and a hearing was held on October 3, 1979. Two years later, on November 30, 1981, the Secretary of Education sustained Mrs. Krall's appeal, concluding that she did not act in an amoral manner. This appeal by the board ensued.²

Where, as here, the Secretary did not take additional testimony,³ his scope of review is limited to a determination of (1) whether there was substantial evidence to support the board's action and (2) whether, as a matter of law, the public employee's conduct constituted a violation of the school code.

Strinich v. Clairton School District, 494 Pa. 297, 431 A.2d 267 (1981); Langley v. Uniontown Area School District, 28 Pa. Commonwealth Ct. 69, 72, 367 A.2d 736, 737, 738 (1977).⁴ Thus, the issue here is whether Mrs. Krall's conduct constituted immorality as a matter of law.

See Landi v. West Chester Area School District, 23 Pa. Commonwealth Ct. 586, 590, 353 A.2d 895,

897 (1976).⁵

Our Supreme Court, in Horosko v. Mt. Pleasant Township School District, 335 Pa. 369, 372, 6 A.2d 866, 868, cert. denied, 308 U. S. 553, 60 S. Court 101, 84 L. Ed. 465 (1939), defined "immorality" in Section 1122 of the Code as:

A course of conduct as
offends the morals of
the community and is a bad
example to the youth whose
ideals of teachers is sup-
posed to foster and elevate.

Moreover, questions of morality are not limited to sexual conduct, but may include lying. See Appeal of Flannery, 406 Pa. 515, 178 A.2d 751 (1962)

The determination of community standards is made by the school board, and thus a finding of the board that a professional employee was guilty of offending the moral standards of the community by his actions will not be disturbed on appeal when

supported by substantial evidence. Penn-Delco School District v. Urso, 33 Pa. Commonwealth Ct. 501, 382 A.2d 162 (1978). Such substantial evidence necessary to justify dismissal is determined by whether a reasonable person acting reasonably might have reached the same decision as the board. Id.

Although Mrs. Krall's unexcused absences might also have been considered in the context of "persistent willful misconduct,"⁶ at least her misrepresentations are properly the subject of an immorality charge. Given our limited scope of review, we cannot say that a reasonable person might not have reached the same decision as the board.

Accordingly, we reverse.

s/ _____
David W. Craig, Judge

BETHEL PARK SCHOOL DISTRICT, : IN THE COMMONWEALTH
Petitioner : COURT OF PENNSYLVANIA
v. :
BETTE T. KRALL, :
Respondent : NO. 3236 C.D. 1981

O R D E R

NOW, June 8, 1982, the order of the Secretary of Education, dated November 30, 1981, No. 9-79, is hereby vacated, and the decision of the Bethel Park School District, Allegheny County, terminating the contract of Bette T. Krall is hereby reinstated.

s/

DAVID W. CRAIG, Judge

Certified From the Record
June 8, 1982

Francis C. Barbush
Chief Clerk

FOOTNOTES

1. Public School Code of 1949, Act of March 10, 1949, P.L. 30, as amended, 24 P.S. §11-1122, which provides:

The only valid causes for termination of a contract heretofore or hereafter entered into with a professional employee shall be immorality, ... or ... persistent and wilful violation of the school laws of this Commonwealth on the part of the professional employee
....

2. The board's petition for review questioned the Secretary's decision in regard to both his ruling on the question of immorality and his ruling on the question of persistent and willful violation of the school rules. However, counsel

for the school board stated before the hearing examiner that the decision to terminate Mrs. Krall was made solely on the issue of immorality. Thus the only issue before this court is that of Mrs. Krall's "immorality" under the Code.

3. Mrs. Krall contends that the Secretary improperly refused to take additional testimony. However, the Code explicitly states that the Secretary "may hear and consider such additional testimony as he may deem advisable to enable him to make a proper order." 24 P.S. §11-1131. See Clairton School District v. Strinich, 50 Pa. Commonwealth Ct. 389, 391, 392, 413 A.2d 26, 28 (1980), aff'd. 494 Pa. 297, 431 A.2d 267 (1981)
4. In Strinich, our Supreme Court clarified the standard of scope of review in matters involving the Secretary of Education:

To the extent that additional testimony is taken, the Secretary may make additional findings of fact. If no such additional testimony is taken, however, the Secretary's review is limited to traditional appellate review. Strinich, 494 Pa. at 302, 431 A.2d at 269, n.3.

5. In Landi, Judge Rogers indicated that whether conduct constituted "cruelty" (a Section 1122 classification) was a matter of law.
6. See Lucciola v. Secretary of Education, 25 Pa. Commonwealth Ct. 419, 360 A.2d 310 (1976).